

### UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

### **REGION IX**

## 75 Hawthorne Street San Francisco, CA 94105-3901

# NOV 1 4 2016

Dear Honorable Leader:

The U.S. Environmental Protection Agency (EPA) is writing to inform you of an action that may affect your tribe, and which may be appropriate for government-to-government consultation, per the *EPA Policy on Consultation and Coordination with Indian Tribes*. If you decide to seek consultation, EPA requests that you do so by **December 14, 2016** by notifying the contacts below.

EPA is reviewing the U.S. Army Corps of Engineers (Corps) Nationwide Permit (NWP) Program for activities in waters of the U.S., and developing a conditional blanket (or "programmatic") Clean Water Act (CWA) section 401 certification covering most<sup>ii</sup> federally-recognized tribes in our region. You may recall receiving a letter from the EPA soliciting your tribe's input for our 2012 certification of the NWP Program. That certification will expire on March 18, 2017; EPA's pending certification will cover the Corps NWPs valid from 2017-2022.

Projects proposed on tribal lands which involve a discharge of dredged or fill material directly into jurisdictional wetlands or streams—including seasonally dry arroyos or "washes"—need a CWA section 404 permit from the Corps. The 404 permit in turn triggers Section 401 of the CWA, which requires certification that water quality will be protected from the impacts of the fill. On federally-recognized tribal lands, this certification is performed by EPA unless the tribe has been federally approved to do so.

The Corps has a number of different types of permits under section 404, including the group of activity-specific NWPs. All activities authorized under the NWP Program are meant to have minimal adverse environmental impact, both individually and cumulatively. The Corps reviews the entire program every five years for reauthorization and potential modification, and requests that section 401 certifying authorities provide a programmatic review and certification. When this review occurs, certifying authorities must decide whether to (1) certify the program as proposed; (2) certify the program with specific conditions; (3) certify some of the NWPs, but reserve project-by-project review for others; or (4) deny or waive certification of some or all of the NWPs.

The EPA is developing general and permit-specific 401 conditions, and determining whether to deny or waive certification of some or all NWPs for the 2017-2022 program. This action affords EPA the opportunity to solicit input and to address any potential tribal concerns or suggestions during the certification process. If you elect to request consultation, please notify Leana Rosetti by December 12, 2016. You may reach Ms. Rosetti at rosetti.leana@epa.gov, by calling (415) 972-3070, or by letter addressed to U.S. EPA Region 9, Water Division (WTR-2-4), 75 Hawthorne Street, San Francisco, CA 94105. EPA will presume you do not wish to consult on this topic if no response is received by this date. If you request consultation, the EPA will contact you to initiate the process.

Additional information on the aforementioned regulatory programs and the federal government's roles in protecting and regulating aquatic resources are available on-line, iii as are the newly proposed 2017-2022 Nationwide Permits. We have also enclosed the 401 certification for tribal lands for the 2012 NWPs for your reference, and a fact sheet describing 401 certification on tribal lands. We anticipate the 2017 certification to contain similar conditions.

With or without a formal consultation process, EPA will inform you of our intended certification action and any special conditions in writing. Please contact Ms. Rosetti with any questions about the proposed actions. If you have general questions regarding the EPA consultation requirements, please call Gail Louis, Manager of Water Division's Tribal Office, at <a href="louis.gail@epa.gov">louis.gail@epa.gov</a> or (415) 972-3467.

Sincerely,

Tomás Torres

Director

Water Division

Cc: Tribal Environmental Director

A list of additional regional conditions can be found at the different Corp Districts' websites at:

#### Sacramento District:

http://www.spk.usace.army.mil/Media/Regulatory-Public-Notices/Article/798790/coe-2015-0017-ca-nv-ut-nationwide-permit-reissuance-request-for-comments/

### San Francisco District:

http://www.spn.usace.army.mil/Missions/Regulatory/Public-Notices/Article/792145/2016-00006/

### Los Angeles District:

 $\underline{060\%20} < http://www.spl.usace.army.mil/Portals/17/Users/032/24/1824/2017\%20NWP\%20Initial\%20Public\%20Notice\%20SPL\%20final.pdf?ver=2016-06-08-172052-060\%20originalAttribute=$ 

<sup>&</sup>lt;sup>i</sup> EPA's Policy is online at: <a href="https://www.epa.gov/tribal/forms/consultation-and-coordination-tribes">https://www.epa.gov/tribal/forms/consultation-and-coordination-tribes</a>

<sup>&</sup>lt;sup>II</sup> There are 148 federally-recognized tribes in EPA Region 9. To date, thirteen of these tribes have been approved as Section 401 certifying authorities—the Navajo Nation, Hualapai Tribe, Paiute-Shoshone of the Bishop Community, Big Pine Paiute-Shoshone Tribe, Twenty-Nine Palms Band of Mission Indians, Hoopa Valley Tribe, Hopi Tribe, Pyramid Lake Paiute Tribe, Dry Creek Rancheria of Pomo Indians, White Mountain Apache Tribe, Cortina Band of Wintun Indians, Pala Band of Mission Indians, and Walker River Paiute Tribe.

Fact Sheets are online at: https://www.epa.gov/wetlands/wetlands-factsheet-series

<sup>&</sup>lt;sup>iv</sup> A list of the proposed NWPs and general conditions can be found on the Corps' website at: http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/